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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,637	02/27/2004	Jeffrey Lynn Chamberlain		7226

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EXAMINER	
SMITH, KIMBERLY S	
ART UNIT	PAPER NUMBER
3644	
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08/16/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/788,637	CHAMBERLAIN, JEFFREY LYNN	
	Examiner	Art Unit	
	KIMBERLY SMITH	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 July 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5 and 7-20* is/are pending in the application.

4a) Of the above claim(s) *7-14* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 15-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 February 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claim 7-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/28/2011.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the screw cap must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-3, 15-17 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson, US Patent 5,857,431 in view of Deshaies, US Patent 5,944,516 in view of Businger, CH 700289 A2

5. Regarding claims 1 and 15, Peterson discloses an apparatus comprising a reservoir (@20) having a wall, a fill aperture (column 3, line 63) and valves (18), the valves having pressure actuated opening means (reference Figures 3 and 4), the valves under pressure allowing liquid to exit the reservoir, the valves when not under pressure denying egress from the reservoir and wherein the valves are slits deformable by pressure. However, Peterson does not disclose the aperture having a closable openable cap. Deshaies teaches within the same field of endeavor the use of a fill aperture having a closable openable cap (22, Figure 2). It would have been obvious to one having ordinary skill in the art at the time of the invention to use the fill aperture as taught by Deshaies as the fill aperture of Peterson as these were known functional equivalents in the art for filling an internal chamber with a substance and such modification would function in a known and predictable manner.

6. With respect to the limitation regarding the components of the invention being edible, Peterson clearly discloses that the apparatus is functionally capable of use when the material of manufacture is rawhide (column 2, line 5). Peterson further states that rawhide is a known functional equivalent to latex and rubber for manufacturing of the apparatus (column 2, lines 6-8). Peterson also details that the reservoir can be made of suitable materials being non-toxic to animals which include rubber (column 3, line 12). As Peterson has stated within the specification that rawhide is a known functional equivalent to rubber (per column 2, line 5) and that the reservoir can be made of a material such as rubber (column 3, line 12), it would have been obvious to one having ordinary skill in the art at the time of the invention to manufacture the reservoir from rawhide s these are two known functional equivalents for the manufacture of chew toys and it has further been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. As such, Peterson as modified teaches an edible and biodegradable apparatus.

7. Further regarding the edibility of the fill cap, Deshaies clearly discloses the use of a fill cap for allowing fluid into a reservoir but does not state that such cap (i.e. valve) is biodegradable. Businger teaches within the same field of fluid filling valves the use of a biodegradable valve for the filling of a reservoir. As such, it would have been obvious to use the biodegradable material as taught by Businger as the material of manufacture for the valve so as to provide an ecologically friendly apparatus. It has further been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416

8. Regarding claim 15, Deshaies further teaches the cap is a screw cap (column 4, lines 38-39).

9. Regarding claims 2 and 16, Peterson further discloses an outer layer enclosing the wall having an aesthetic design (column 2, lines 1-8) is edible (column 2, line 5).

10. Regarding claims 3 and 17, Peterson in view of Deshaies discloses the invention substantially as claimed but does not positively disclose the use of indicia. It would have been a matter of obvious design choice to one having ordinary skill in the art at the time of the invent to apply indicia to the device since the applicant has not stated that the indicia is for any particular purpose or solves a stated problem not obvious to one having skill in the art and the invention would function equally as well absent the indicia.

11. Claims 4 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson, US Patent 5,857,431 in view of Deshaies, US Patent 5,944,516 in view of Businger, CH 700289 A2 as applied to claim 1, above and further in view of Hass, US Patent 5,961,406.

12. Peterson as modified per claim 1 discloses the invention substantially as claimed. However, Peterson as modified does not disclose the use of a cord attached to the apparatus. Hass teaches within the same field of endeavor the use of a cord attached to an animal apparatus as a means for holding the device without having to contact the wet device after the animal has chewed on it. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply a cord to the device of Peterson as modified as taught by Hass in order to enable the owner to carry the device without having to contact the chewed portion of the device.

13. Regarding claim 18, as the cord of Hass is attached to the apparatus, it thereby inherently has an attachment means being attached to the apparatus.

14. Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson, US Patent 5,857,431 in view of Deshaies, US Patent 5,944,51 in view of Businger, CH 700289 as applied to claim 1, above and further in view of Huettner et al., US Patent 6,092,489 (Huettner).

15. Peterson as modified per claim 1 discloses the device substantially as claimed. However, Peterson as modified does not disclose the use of a noisemaker. Huettner teaches within the same field of endeavor the use of a noisemaker within a reservoir for exciting the animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the noisemaker as taught by Huettner to the device of Peterson as modified in order to excite the dog and thereby entice the animal in the use of the device.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KIMBERLY SMITH whose telephone number is (571)272-6909. The examiner can normally be reached on Monday-Thursday 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Collins can be reached on 571-272-6886. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KIMBERLY SMITH/
Primary Examiner, Art Unit 3644